IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR

TUESDAY, THE 30TH JANUARY 2007 / 10TH MAGHA 1928

OP.No. 7845 of 1997(H)

PETITIONER:

KURIAN E. KALATHIL,
TC NO. 27/373-7,
GENERAL HOSPITAL ROAD,
THIRUVANANTHAPURAM- 695 037.

BY ADV. SRI.N.NANDAKUMARA MENON
SRI.MURALI PURUSHOTHAMAN

RESPONDENTS:
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1. **STATE OF KERALA, REP. BY THE CHIEF SECRETARY, GOVT. OF KERALA, THIRUVANANTHAPURAM.**

2. **THE COMMISSIONER OF AGRL. INCOME TAX, THIRUVANANTHAPURAM.**

3. **THE AGRL. INCOME TAX AND SALES TAX OFFICER, NEDUMANGAD.**

4. **THE DIST. COLLECTOR, THIRUVANANTHAPURAM.**

BY GOVERNMENT PLEADER SRI. JULIAN XAVIER

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 30/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CMP NO. 13890/1997 IN OP NO. 7845/1997 H.

DISMISSED

30/01/2007. SD/- K.BALAKRISHNAN NAIR, JUDGE

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1. COPY OF THE RELEVANT EXTRACT OF SALE DEED NO. 2928/95 DT. 29/6/95.

EXT.P2. COPY OF THE PROCEEDINGS NO. P.67/83-84 DT. 23/11/89 OF THE R3.

EXT.P3. COPY OF THE PROCEEDING ORDER NO. AITRP 109/91 DT. 19/09/91 BY R2.

EXT.P4. COPY OF THE DEMAND NOTICE NO. A1/ 2022/97/AIT DT. 22/3/97 RECEIVED BY THE PETITIONER.

EXT.P5. COPY OF THE DEMAND NOTICE ISSUED TO THE PETITIONER U/S 34 OF THE KRR ACT NO. A1/2022/97/AIT DT. 22/3/97.

EXT.P6. COPY OF THE NOTICE WITH NO. P 67/83-84 DT. 23/12/96 BY R3 TO THE PETITIONER.

EXT.P7. COPY OF THE LETTER DT. 21/10/92 SENT BY THE TAHSILDAR, KOZHIKODE TO THE DIST. COLLECTOR, KOZHIKODE.

EXT.P8. COPY OF THE AGRL. INCOME TAX ASSESSMENT ORDER IN RESPECT OF PONMUDY ESTATE FOR THE PERIOD 1973 TO 1977.

EXT.P9. COPY OF THE PROCEEDINGS OF THE SALES TAX OFFICER, VYTHIRI, KALPETTA DT. 30/3/99 ORDER NO. A. 480/99.

EXT.P10. COPY OF THE REFUND PAYMENT ORDER DT. 30/3/99 ISSUED TO THE TREASURY OFFICER, SUB TREASURY, S. BATHERY BY THE SALES TAX OFFICER, VYTHIRI, KALPETTA.

OP NO. 7845/1997 H.

RESPONDENT'S EXHIBITS:

EXT.R1A. COPY OF THE AGREEMENT DT. 11/3/94.

EXT.R1B. COPY OF THE SALE DEED.

EXT.R1C. COPY OF THE LETTER DT. 30/3/94.

EXT.R1D. COPY OF THE LETTER DT. 30/6/95.

EXT.R1E. COPY OF THE ORDER DT. 12/10/90.

[True Copy]

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P.R. RAMAN, J.

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O.P. NO. 7845 OF 1997

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DATED THIS, THE 1ST DAY OF DECEMBER, 2007.

J U D G M E N T

Petitioner is the owner of 'Ponmudi Estate' at Ponmudi in Nedumangad Taluk, Thiruvananthapuram District. The said Estate originally belonged to M/s. Ponmudi Holdings Limited, a company incorporated in England, who sold it to one K.T. Thomas on 18.8.1972. K.T. Thomas sold the said Estate to one Chettiappan on 18.9.1991. Chettiappan passed away in September, 1993 and the petitioner herein purchased the said Estate from the legal heirs of Chettiappan as per Sale Deed No. 2928 of 1995 of the Sub Registrar Office, Thiruvananthapuram. Relevant extract of the said sale deed is produced as Ext.P1 in this original petition. As per the records of the Agricultural Income Tax Office, K.T. Thomas is the assessee in respect of Ponmudi Estate from 1972 to 1991. He is also an assessee in respect of the Agricultural income from Puthuppady Estate in Puthuppady Village, Kozhikode District. By Ext.P2 proceedings of the Agricultural Income Tax Officer, Nedumangad, who is the third respondent herein, K.T. Thomas was separately assessed in respect of the agricultural income from Ponmudi Estate as well as Puthuppady

Estate, for the assessment year 1983-84. As respect the income from Ponmudi Estate, he was assessed for an amount of Rs. 9,09,749/- and as respect Puthuppady Estate, he was assessed for an amount of Rs.11,59,316/-. Thus, the total income together for the above said two estates is shown as Rs.20,69,070/-. The total amount of tax on the said income comes to Rs. 14,24,849/-. Along with surcharge due, the total amount comes to Rs. 15,67,334/-. Ext.P3 is a proceeding of the Commissioner of Agricultural Income Tax, Thiruvananthapuram, the second respondent herein, which shows that a revision petition was filed by K.T. Thomas against the assessment made as per Ext.P2, which was ultimately dismissed. For realisation of an amount of Rs. 15,67,334/- which was due as per Ext.P2, revenue recovery proceedings were initiated and Ext.P4 demand is raised against the petitioner under Section 7 of the Revenue Recovery Act. Ext.P5 is a notice issued prior to attachment served on the petitioner.

2. Ext.P7 letter issued by the Tahsildar, Kozhikode, addressing the District Collector, Kozhikode, shows K.T. Thomas, Bright House, Calicut was not in possession of any land in Puthuppady Village from 1.1.1973 and that he has not remitted any basic tax or plantation tax. No plantation tax was assessed either in the name of K.T. Thomas or in his name as

Managing Director of any company so far. As per the revenue records, there are 1000 occupants of the extensive land available in Puthuppady Village and no transfer of registry has been effected in the Village or Taluk records.

3. That being so, petitioner contends that he is not liable whatsoever in respect of the income arising from Puthuppady Estate as he had purchased only Ponmudi Estate from Chettiappan. He disclaims his liability to be proceeded for recovery of any amount due and payable in respect of the agricultural income payable from Puthuppady Estate. Hence petitioner seeks to quash Exts.P2,P3,P4 and P5 and for a declaration that he is not liable to pay any agricultural income tax as shown in Exts.P2 and P3.

4. After filing the original petition, petitioner produced Ext.P8 which is a true copy of the proceedings of the Agricultural Income tax & Sales tax Officer, Nedumangad, in respect of Ponmudi Estate for the period 1973 to 1977. The Assessee in Ext.P8 is shown as the petitioner herein. It is contended by the petitioner that the said assessment is made in his name for the period 1973 to 1977 the period during which K.T. Thomas was the owner of Ponmudi Estate. According to the petitioner, in so far as Ext.P4 proceedings initiated against him for realisation of amount, if any, due towards the income from Puthuppady Estate is concerned, he has no

liability whatsoever.

5. In the counter affidavit filed by the State, though produced as Ext.R1(a) which is an agreement for sale between Umayal Chettyappan and others on the one hand and the petitioner herein on the other. Ext.R1 (b) produced is the full text of the sale deed executed on 29.6.1995 thereafter. It is averred in the counter affidavit that the petitioner purchased Ponmudi Estate from the legal heirs of Chettyappan and even as per the agreement Ext.R1(a) petitioner has agreed to discharge the Government dues such as Agricultural Income tax, Plantation tax and all other labour dues of Chettiappan and it is on the strength of the said agreement that the entire liability of Agricultural Income Tax due from the original assessee was sought to recover from the petitioner. Ext.R1(c) is a letter addressed by the petitioner under date 30.3.1994 to the Agricultural Income Tax Officer informing him about the agreement for purchase of Ponmudi Estate from the legal heirs of late Chettyappan wherein reference was also made to the agreement to settle the outstanding liabilities. Ext.R1(d) is yet another letter dated 30.6.1995 sent by the petitioner to Umayal Chettyappan agreeing that all the Government liabilities such as Agricultural Income Tax, plantation tax ext. shall be settled by him and in the event of any claim from K.T. Thomas, the same will also be settled by him, though as per

records, there is no such claim. As per Ext.R1(d) letter, petitioner reserved his right to claim from K.T. Thomas, any excess amount paid by late Chettyappan to K.T. Thomas. Ext.R1(e) is produced to show that there was some proceedings against K.T. Thomas for realisation of dues and the same was challenged before the apex court which disposed of the matter recording the undertaking that Chettyappan will discharge the revenue dues. The sum and substance of the contention raised in the counter affidavit is that the petitioner's liability to pay the Agricultural Income Tax due in respect of Ponmudi Estate cannot be disclaimed by him in view of the above proceedings and undertakings given.

6. In the reply affidavit filed by the petitioner, he has produced Exts.P9 and P10 documents evidencing the fact that as per order dated 30.3.1999 passed by the Sales Tax Officer, Vythiri, Kalpetta, an amount of Rs. 9,71,683/- is paid by the petitioner as excess sales tax which is refunded to him and the same is adjusted towards the Agricultural Income Tax dues for the years 1973-74 to1976-77, 1981-82 to 1982-83 from K.T. Thomas. The photo copy of the refund payment order issued to the petitioner is Ext.P10. It is his case that the entire liability towards Ponmudi Estate has been discharged by him and over and above, he deposited an amount of Rs. 5 lakhs as directed by this Court on 13.5.1997 while granting an order of

stay.

7. Heard both sides. The point that arises for consideration is as to whether on the available materials, it can be said that there is any liability on the petitioner towards Agricultural Income in respect of Puthuppady Estate. Even though initially petitioner challenged the revenue recovery proceedings in total, learned counsel Sri. Nandakumara Menon, appearing on behalf of the petitioner, however, confined his submission against the recovery proceedings initiated against the petitioner, in respect of Puthuppady Estate. According to him, he has already discharged his liability towards Ponmudi Estate as evidenced by Exts.P9 and P10 proceedings.

8. The contention raised in the counter affidavit only supports the recovery of the amount as respect Ponmudi Estate. No materials are placed before this court to show nor any contention raised by the State that petitioner is liable for any amount of Agricultural Income Tax due from or towards Puthuppadi Estate.

9. Taking into consideration the subsequent facts as revealed by the reply affidavit, it is beyond dispute that petitioner has paid the amount as assessed in Ext.P3 towards the liability arising from the income received from Ponmudi Estate, namely an amount of Rs. 9,71,683/-. The balance

amount being towards the Puthuppady Estate, Ext. P4 revenue recovery notice issued against the petitioner is quashed. The right of the State to proceed against the property, namely Puthuppady Estate for realisation of the balance amount, if any, towards that Estate is left open and it is open to them to proceed against the person accountable. It is fairly submitted by the learned counsel for the petitioner that if there is any balance amount towards any tax dues as regards Ponmudi Estate is concerned, petitioner is prepared to pay the same as and when a demand is made. This submission is recorded.

The original petition is thus allowed quashing Ext.P4 proceedings as against the petitioner.

P.R. RAMAN,
(JUDGE)

knc/-

P.R. RAMAN, J.
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O.P. NO. 7845/1997
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J U D G M E N T

1ST DECEMBER, 2007.